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Joint Inspection Unit

Review of mechanisms and policies addressing conflict of interest in the United Nations system

Note by the Secretary-General

Addendum

The Secretary-General has the honour to transmit to the members of the General Assembly his comments and those of the United Nations System Chief Executives Board for Coordination on the report of the Joint Inspection Unit entitled "Review of mechanisms and policies addressing conflict of interest in the United Nations system" (A/73/187).

* A/73/150.

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Summary

The report of the Joint Inspection Unit entitled "Review of mechanisms and policies addressing conflict of interest in the United Nations system" (A/73/187) provides a system-wide review of existing regulatory frameworks for addressing conflicts of interest.

The present note reflects the views of organizations of the United Nations system on the recommendations provided in the report. The views have been consolidated on the basis of inputs provided by member organizations of the United Nations System Chief Executives Board for Coordination, which welcomed the report and supported some of its conclusions.

I. Introduction

1. The report of the Joint Inspection Unit entitled "Review of mechanisms and policies for addressing conflict of interest in the United Nations system" (A/73/187) provides a system-wide review of existing regulatory frameworks for addressing conflicts of interest. In the report, the Joint Inspection Unit assesses the mechanisms and practices in place that address existing and potential conflicts of interest, identifies gaps and challenges, and proposes solutions while identifying best/good practices.

II. General comments

2. Organizations of the United Nations system welcome the report, noting that it contains relevant and useful recommendations aimed at strengthening the regulatory frameworks on conflict of interest and provides a rich overview and inventory of best/good practices and experiences.

3. Organizations note that the scope of the report could have extended to vendors and organizational conflicts, and that while reference is often made to "staff" in the report, the findings of the review should be understood to be applicable to United Nations personnel under various contractual arrangements.

4. Some organizations observe that several of the recommendations call for actions by governing bodies and point to the distinct role that governing bodies have in exercising their oversight and strategic guidance function vis-à-vis that of the executive heads — with the support of relevant departments and organizational functions responsible for accountability matters and oversight — on issues concerning the monitoring of conflicts of interest and related staff accountability.

5. Organizations note the dynamic and changing nature of conflicts of interest and how this may create situations in which staff members may have no conflict of interest at the time of declaration or appointment, but be faced with a conflict of interest at a later point in time. Organizations concur on the importance of conducting pre-appointment vetting for conflicts of interest and raising the awareness of all staff, at the time of recruitment and subsequently, on their obligation to report potential conflicts and resolve them with their supervisors.

6. With regard to post-employment and the "revolving doors" phenomenon, organizations concur with the finding that it would be difficult to monitor and enforce post-separation restrictions (paras. 177 and 178); however, they also note that the report does not provide any background or analysis to demonstrate the appropriateness or effectiveness of restrictive covenants in employment contracts to deal with conflicts of interest or the "revolving doors" phenomenon. Organizations also underscore that the introduction of contractual non-compete clauses prohibiting certain post-employment activities does not seem appropriate, given that the United Nations common system package of salaries, benefits and entitlements does not contain any element to compensate accordingly for such restrictions.

7. Organizations support some of the recommendations and note that their implementation would require more resources than ethics offices currently have.

III. Specific comments on the recommendations

Recommendation 1

Executive heads of the United Nations system organizations should direct their officials entrusted with the ethics function to map the most common occurrences and register the risks of situations exposing their respective organizations to organizational conflicts of interest, no later than December 2019.

8. While organizations generally support the recommendation, some indicate that, in particular in decentralized and small organizations, implementing it may require management knowledge and resources beyond the knowledge and expertise of the ethics office. Some organizations also indicate that the analysis that will inform the mapping could also cover mitigation measures related to the risks mapped.

Recommendation 2

Executive heads of the United Nations system organizations, who have not yet done so, should direct their human resources services to introduce a mandatory conflict of interest disclosure form that should be signed by staff members, along with their declaration of office, by all staff members and other types of personnel joining an organization, whether in a short- or long-term capacity. The form should be developed with the assistance of the ethics function of the respective organization and with other functions, as appropriate, and in consultation with any future inter-agency forum.

9. Organizations partially support this recommendation, and although requiring new staff to sign a mandatory conflict of interest disclosure form may contribute to creating greater awareness among staff about conflicts of interest, they noted several challenges, including issues related to duplication and confidentiality. Organizations discourage a situation in which staff are required to sign separate forms on each behavioural or conduct-related aspect of the regulations and rules.

10. In the case of the United Nations Secretariat, unlike the United Nations funds and programmes, such a proposed disclosure form would not be confidential, as heads of office and the Office of Human Resources Management would have access to the responses of staff, possibly making staff reluctant to fully disclose conflicts of interest.

11. Organizations believe that the signing of a separate conflict of interest disclosure form upon recruitment may fall short of addressing conflicts of interest adequately given that the situations of staff members evolve over time. Ongoing awareness-raising, at the time of recruitment and subsequently, has proven to be an effective approach by many organizations.

12. Some organizations also note that for a self-certification programme to be successful, human resources services and heads of department or directors would need to strengthen staff skills in identifying conflicts of interest, including in vetting outside activities. While the ethics offices may be able to provide advice when requested, they will be aware only of the cases brought to their attention.

Recommendation 3

The governing bodies of the United Nations system organizations should request the executive heads of the organizations to prepare a detailed report on existing financial disclosure programmes and propose any changes to the rationale and scope of those programmes that are needed to increase their effectiveness.

13. Organizations note that this recommendation is addressed to governing bodies. Organizations further note that the recommendation seems to suggest that governing

bodies are dissatisfied with the current arrangements or that those arrangements are ineffective, even though no such evidence is shown in the report.

14. The policies of the United Nations Secretariat governing ethics, integrity and conflicts of interest are reviewed regularly, with a view to enhancing the focus on conflict of interest risk management through different mechanisms. Efforts are being made to expand the coverage of declarations of interests and conflict of interest management to more staff categories, including the possibility of self-certification requirements applicable to all staff. Any proposed changes should be carefully considered in conjunction with other proposals for conflict of interest risk mitigation strategies.

15. Overall, organizations prefer system-wide solutions and standards to an entity-by-entity review, so as to facilitate and drive consistency and harmonization; however, several organizations do not see any immediate need to prepare a report.

Recommendation 4

Executive heads of the United Nations system organizations, who have not yet done so, in consultation with the Legal Network of the United Nations system organizations, should take the necessary steps to introduce, by December 2019, adequate legal clauses in contractual agreements with their staff and non-staff, as appropriate, binding them to the period of restriction set for their function that prohibits them from engaging in clearly defined post-employment activities for the duration of that period of time.

16. Organizations note that the report does not provide an analysis to demonstrate the appropriateness or effectiveness of restrictive covenants in employment contracts to deal with conflicts of interest or the "revolving doors" phenomenon.

17. Organizations partially support this recommendation and do not find the introduction of contractual non-compete clauses prohibiting certain post-employment activities to be appropriate, given in particular that the United Nations common system package of salaries, benefits and entitlements does not contain any element to compensate accordingly for such restrictions.

18. Organizations find that from a human resources perspective, the inclusion of restrictive clauses in employment contracts may act as a disincentive to accept employment with the United Nations. This is especially true of organizations employing personnel using shorter-term contractual modalities rather than long-term appointments. In a recruitment environment in which short-term expertise and talent is needed and there is intense competition for such profiles, including a restrictive post-employment clause that cannot be enforced does not make strategic sense. From a practical perspective, organizations do not have the resources to monitor the post-employment movements of former staff and contractors to enforce such clauses (in the event that they were enforceable).

19. Organizations note that the Legal Network is not part of the High-level Committee on Management. The Office of Legal Affairs, which manages the Network, attends the meetings of the High-level Committee on Management in an observer capacity so that it can apprise the Legal Network during the annual meetings of issues under consideration by the Committee's networks that may be of interest from a legal perspective. The above recommendation will nonetheless be included in the agenda for discussion at the forthcoming meetings of the Legal Network, which will include a discussion on adequate contractual arrangements addressing post-employment restrictions for non-staff personnel.

20. Finally, letters of appointment to the United Nations Secretariat already contain adequate legal clauses on such restrictions, by referencing relevant Staff Regulations

and Rules and administrative issuances, which include any applicable post-employment restrictions. Reiterating just one provision or set of provisions from those Staff Regulations and Rules and issuances could create uncertainty or confusion for staff members about the relative force or applicability of others that are not similarly singled out and repeated in their contracts.

Recommendation 5

Executive heads of the United Nations system organizations, who have not yet done so, should take the necessary steps, no later than the end of December 2019, to: (a) ensure that all staff members, irrespective of their level and grade, successfully complete the initial and periodic mandatory ethics training course and obtain the respective certification; (b) link certification of the required ethics training course to the annual staff performance appraisal cycle; (c) include ethics training in the induction training of non-staff, including refresher courses after service intervals, as appropriate.

21. Organizations support this recommendation and note that there should be a greater focus on holding staff accountable for behaving in an ethical manner, regardless of their contract type, and that the completion of mandatory programmes is a means to an end that does not in itself guarantee ethical behaviour.

22. In the United Nations Secretariat performance management system and policy (ST/AI/2010/5 and ST/AI/2010/5/Corr.1), it is stated that staff should be "held accountable for demonstrating the three core values of integrity, professionalism and respect for diversity/gender equality". The course entitled "Ethics and integrity at the United Nations" addresses directly the core value of integrity and staff members are thus held accountable for their ethical behaviour accordingly. Pursuant to ST/IC/2017/17, staff members are expected to take all mandatory learning programmes within six months of joining the United Nations, which includes the course on ethics and integrity.

23. The issue of non-staff personnel has been raised by some organizations, as in some cases they do not receive induction training.

Recommendation 6

The governing bodies of the United Nations system organizations should, in exercising their oversight role on the accountability framework of their respective organizations, regularly monitor conflict of interest issues, including updates to relevant policies, administrative instruments and mechanisms.

24. Organizations note that this recommendation is addressed to governing bodies and while they support the underlying premise of the recommendation, they note that the role of enhancing the commitment of United Nations staff members and personnel during service is not performed by the governing bodies to the level of detail prescribed by the recommendation.

25. Organizations recognize that it is particularly relevant to ensure that policies governing ethics, integrity and conflict of interest management are reviewed and updated regularly, while being cognizant of avoiding over-reporting and excessive monitoring. The updates should also include the commentaries and interpretations of staff regulations and rules to provide guidance to staff in their observance of policies.